

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Create a
Consistent Regulatory Framework for the
Guidance, Planning, and Evaluation of
Integrated Distributed Energy Resources.

Rulemaking 14-10-003
(Filed October 2, 2014)

**REPLY COMMENTS OF THE OFFICE OF RATEPAYER ADVOCATES ON
PROPOSED DECISION ADDRESSING COMPETITIVE SOLICITATION AND
UTILITY REGULATORY INCENTIVE PILOT**

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I. INTRODUCTION

The Office of Ratepayer Advocates (ORA) replies to comments filed pursuant to the *Proposed Decision of Administrative Law Judge Hymes Addressing Competitive Solicitation and Utility Regulatory Incentive Pilot* (PD), issued on November 10, 2016. The PD adopts a pilot program (Incentive Pilot) to test: (1) A competitive solicitation framework for Distributed Energy Resources (DERs) that defer or avoid distribution capital expenditure, and (2) A regulatory incentive mechanism to encourage the Investor Owned Utilities (Utilities) to deploy DERs to cost-effectively defer or avoid distribution capital expenditures. In sum:

- Market Participants should be excluded from discussions concerning the cost of wires solutions.
- The incentive rate should be based on the procured DERs' contract price.
- The language in the Proposed Decision is sufficiently clear to allow Utilities to earn a return on a DER investment so long as the DER is deferring or avoiding a traditional distribution upgrade.
- The PD should maintain the Utilities' flexibility in selecting project sizes that fit identified distribution needs.
- Performance of individual DER deferral projects should be included in the performance evaluation reports.
- The Commission should permit optional projects as a means to test the utility incentive mechanism.
- The final performance evaluations should cover the entire deferral need period.

II. DISCUSSION

A. Market Participants should be excluded from discussions concerning the cost of wires solutions.

Both the Solar Energy Industry Association (SEIA) and SolarCity Corporation (SolarCity) recommend that the Commission require Utilities to provide the cost of the “wires” solution for which the utility is seeking a DER alternative to market participants.¹ ORA disagrees. Providing such information may lead to anti-competitive behavior. As the PD notes, “to ensure fair competition, market participants should be excluded from [DPAG] discussions regarding potential distribution costs that may be avoided by distributed energy resources.”² This determination aligns with Commission practice of keeping market-sensitive information confidential pursuant to Decision (D.) 06-06-066 and D.13-10-040. Accordingly, the final decision should maintain the PD’s conclusion that market participants will be explicitly excluded from discussions concerning the cost of wires solutions.³

B. The incentive rate should be based on the procured DERs’ contract price.

SEIA and Vote Solar assert that the incentive rate should be based on the traditional “wires” contract price.⁴ ORA disagrees. Since the traditional “wires” solutions that Utilities will compare DER offers to are hypothetical, pegging the incentive to the DER contract price provides greater cost recovery, cost certainty, and procedural transparency. To do otherwise fails to “ensure that the costs of acquiring [DERs] in the

¹ SEIA Opening Comments to the Proposed Decision, pp. 3-4; See also SolarCity Opening Comments to the Proposed Decision, p. 8.

² PD, pp. 25-26.

³ PD, p. Conclusion of Law, p. 11.

⁴ SEIA Opening Comments on the Proposed Decision, pp. 4-5; See also Vote Solar Comments on the Proposed Decision, p. 3.

Incentive Pilot are lower than the costs of deploying a traditional solution.”⁵ Also, the Utilities are capable of calculating the total incentive amount for each individual DER offer in the offer evaluation process since the Utilities will be required to perform offer-specific evaluations of their project offers.

C. The language in the PD is sufficiently clear to allow Utilities to earn a return on a DER investment so long as the DER defers or avoids a traditional distribution upgrade.

SEIA asserts the PD should be clarified to allow the utility to earn a return on the investment given a long term DER asset by striking the following sentence on page 14 of the PD, “Once the deferral period ends and a traditional investment is made, no incentive would be recovered for that year and going forward.”⁶ However, SEIA errs in two respects.

First, SEIA conflates the purpose of the incentive to be a reward for performance. The incentive, rather, balances the playing field between DERs and wire solutions to fill the required characteristics and values determined in Rulemaking (R).14-08-013.⁷ The attributes the DER can provide in addition to deferment should be reflected in the contractual payments made to the DER provider and the Utilities’ avoided costs of procuring additional resources that serve non-R.14-08-013 needs. This does not suggest that DERs cannot defer or avoid distribution upgrades for a long period of time and that Utilities cannot earn a return on the DER for this purpose.

Second, SEIA’s proposal creates an ambiguity as to whether a Utility could earn a return on DER investment even if it has to implement its contingency plan. Therefore, ORA recommends that the final Decision uphold the PD’s conclusion that Utilities may

⁵ PD, Finding of Fact 43, p. 59.

⁶ SEIA Comments on the PD, pp. 2-3.

⁷ PD, p. 21.

only receive the incentive for as long as the DER is deferring or avoiding a traditional investment.

D. The PD should maintain the Utilities' flexibility in selecting project sizes that fit identified distribution needs.

NRG Energy, Inc. (NRG) asserts the Utilities should identify deferral opportunities above a minimum project size, such as five megawatts.⁸ ORA disagrees, as it runs counter to the purpose and intent of the Competitive Solicitation Framework. The framework determines how the DERs, needed to fill the required characteristics and values determined in R.14-08-013, will be procured for distribution grid upgrade deferral.⁹ Thus, the Utilities should not be required to procure DERs that meet size targets irrespective of the distribution need identified by the Utilities. This is consistent with solicitation principles 1 and 9 adopted by the PD, which require that the Competitive Solicitation Framework meet the identified need on a least-cost, best-fit basis and solicitations focus on identified need.¹⁰

E. Performance of individual DER deferral projects should be included in the performance evaluation reports.

The Joint DR Parties request the PD be revised “to ensure that individual seller performance data will be appropriately aggregated and/or anonymized to protect the confidentiality of any individual seller from public disclosure and potential competitive harm,” and that “[i]ndividual performance of DERs should not be included in the Final Report.”¹¹ ORA disagrees. The Joint DR Parties have not identified how reporting individual performance causes competitive harm. The Commission correctly recognizes

⁸ NRG Comments to the PD, p. 2.

⁹ PD, p. 23.

¹⁰ PD, p. 21.

¹¹ Joint DR Parties Opening Comments, p. 5.

that this information is “relevant to the overall goal of improved distributed energy resource use.”¹²

Aggregating performance data of specific projects does little to educate the Commission and stakeholders on how to improve the use of DERs. Parties need to understand the performance of individual DERs in order to effectively evaluate the results of the PD’s adopted IDER pilot projects. Likewise, anonymizing performance data is not helpful given the small number of projects that will be piloted. ORA recommends the Commission reject the Joint DR Parties’ recommendation to aggregate and/or anonymize performance data in the performance evaluation reports.

F. The Commission should permit optional projects as a means to test the utility incentive mechanism.

CESA requests that “[r]ather than allowing for the testing of the DER incentive proposal to be optional, the Commission should require two pilot projects from each IOU – one to test the Competitive Solicitations Framework and the other to test the DER incentive proposal.”¹³ CESA’s rationale for this recommendation is that the three optional projects may potentially not be developed in the absence of a mandate from the Commission. However, as ORA argued in prior comments, the Incentive Pilot should be designed to test how effectively the utilities incorporate DERs into their day-to-day electric distribution planning and operational activities without actually being required to do so by the Commission.¹⁴ CESA’s proposed revisions to the PD would reverse the explicit modifications the Commission made to the Incentive Pilot based on ORA’s

¹² PD, p. 48; Findings of Fact 80.

¹³ CESA Opening Comments, p. 5.

¹⁴ Comments of the Office of Ratepayer Advocates on the Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge, p. 2. September 15, 2016.

September 15th comments. For these reasons, the Commission should reject CESA's recommendation to require a pilot project to test the Commission's incentive proposal.¹⁵

G. The final performance evaluations should cover the entire deferral need period.

The Joint Utilities note that the PD requires the Utilities to issue a report within 12 months after the approved DER projects are implemented in the second part of the two-part evaluation process. The Joint Utilities object to the narrowly defined scope and timeline of this report, stating it will not capture a full year's worth of data, nor reflect the ability of the resource to meet the specified need over the entire deferral period. The Joint Utilities, therefore, recommend that the "second part of the pilot evaluation include an evaluation of DER performance under the pilot for the duration of the deferral need."¹⁶ ORA agrees with this recommendation. The Utilities, Commission, and stakeholders will require a much more robust evaluation of whether and how the pilot deferral projects meet the technical need over the long term before deferral projects are brought up to scale. For this reason ORA recommends the Commission grant the Joint Utilities' request that "the performance evaluation period cover at least a full year of performance data and a final evaluation at the conclusion of the deferral need period, with the understanding that lessons learned during the first year of operation cannot be considered predicative of future performance."¹⁷

III. CONCLUSION

ORA respectfully submits the reply comments herein.

¹⁵ CSFWG Final Report, p. 36.

¹⁶ Joint Utilities' Opening Comments, p. 13.

¹⁷ Joint Utilities' Opening Comments, p. 14.

Respectfully submitted,

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APPENDIX A

ORA's Proposed Changes To Conclusions Of Law And Ordering Paragraphs Of The Proposed Decision

Conclusions of Law

13. The Commission should approve the contracts for the Incentive Mechanism pilot(s) through the Tier ~~One~~ Three Advice Letter process.

Ordering Paragraphs

XX. Within 60 days following the issuance of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (jointly, the Utilities) shall implement Step One of the Utility Regulatory Incentive Mechanism Pilot (Incentive Pilot), by nominating a subgroup of Distribution Planning Advisory Group members who have no financial interest in the competitive solicitation to advise the utilities on the potential distribution costs that may be avoided by DERs and to observe the Utilities' bid evaluation process. The Utilities shall work with Commission staff to select members of the DPAG subgroup.

13. Within five months following the determination of the proposed resolution in Ordering Paragraph 10, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall complete Step Six of the Utility Regulatory Incentive Mechanism Pilot, by each filing a Tier Three ~~One~~ Advice Letter requesting Commission approval of the contract(s) to procure for projects identified in Ordering Paragraph 9 above.

XX. The Tier 3 Advice Letter should include a discussion of the following:

- a. The total value of the wires solution in relation to the DER distribution deferral value and the total locational net benefit of the DER;
- b. Statement of the IPE verifying and approving the total DER distribution deferral project value;
- c. Discussion of how the total cost of the solicitation is reconciled with costs pre-authorized in the utility's GRC application; and,
- d. Discussion of whether any bids include gas-fired generation resources, including an affirmative showing that greenhouse gas emissions are expected to be reduced over the total life of the resource

14. No later than 90 days after procurement contracts are executed following the filing of the Tier One Advice Letter in per Ordering Paragraph 13, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (jointly, the Utilities) Energy Division staff shall complete Step Seven of the Utility Regulatory Incentive Mechanism Pilot (Incentive Pilot), by filing the first of the two-part Incentive Pilot evaluation. With input from the Utilities and the Distribution Planning Advisory Group (Distribution Planning Advisory Group), the first part of the evaluation shall thoroughly respond to the following questions:

- Was the solicitation successful in procuring distributed energy resources (distributed energy resources) to meet the identified need?
- How did the earnings opportunity provided in this pilot affect utility sourcing of distributed energy resources to defer or displace distribution infrastructure? For the project required to mirror Demonstration “C” in Rulemaking 14-08-013 (if applicable), was there any measurable difference relative to utility sourcing for Demonstration “C”?
- Describe the impact on the Incentive Pilot of the Distribution Planning Advisory Group review of utility project identification?
- Did the competitive solicitation framework process perform effectively?
- What changes to the Incentive Pilot would have made it more effective?
- How would different incentive structures allocate the costs and benefits of the projects differently than the incentive employed in the Incentive Pilot? Include a financial analysis of the impacts on the utilities, customers, and vendors from the three incentive mechanisms using data from the projects completed: i) the percent of investment incentive as proposed, ii) the percent of investment incentive applied to the counterfactual conventional investment, and iii) shared savings.

15. No later than 90 days after procurement contracts are executed following the filing of the Tier One Advice Letter in per Ordering Paragraph 13, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (jointly, the Utilities) Energy Division staff shall complete Step Seven of the Utility Regulatory Incentive Mechanism Pilot (Incentive Pilot), by filing the first second part of the two-part Incentive Pilot evaluation. With input from the utilities and the DPAG, the second part of the evaluation shall investigate the following issues:

- Are there any updates of the first part of the evaluation?
- Evaluate the performance of DERs solicited through the pilot.

- Provide an assessment of whether DERs procured are deferring or avoiding a distribution capital expenditure for each year in which a utility expects to claim an incentive.